

## Merit Systems Protection Board

## § 1201.143

(c) *Filing and default.* A respondent named in an agency complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a respondent fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the administrative law judge's decision.

(d) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

### § 1201.140 Judge; requirement for finding of good cause.

(a) *Judge.* (1) An administrative law judge will hear an action brought by an employing agency under this subpart against a respondent administrative law judge.

(2) The judge will issue an initial decision pursuant to 5 U.S.C. 557. The applicable provisions of §§1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

(b) *Requirement for finding of good cause.* A decision on a proposed agency action under this subpart against an administrative law judge will authorize the agency to take a disciplinary action, and will specify the penalty to be imposed, only after a finding of good cause as required by 5 U.S.C. 7521 has been made.

### § 1201.141 Judicial review.

An administrative law judge subject to a final Board decision authorizing a proposed agency action under 5 U.S.C. 7521 may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 7703.

### § 1201.142 Actions filed by administrative law judges.

An administrative law judge who alleges a constructive removal or other action by an agency in violation of 5 U.S.C. 7521 may file a complaint with the Board under this subpart. The filing and serving requirements of 5 CFR 1201.37 apply. Such complaints shall be adjudicated in the same manner as agency complaints under this subpart.

[71 FR 34232, June 14, 2006]

### REMOVAL FROM THE SENIOR EXECUTIVE SERVICE

### § 1201.143 Right to hearing; filing complaint; serving documents on parties.

(a) *Right to hearing.* If an agency proposes to remove a career appointee from the Senior Executive Service under 5 U.S.C. 3592(a) (2) and 5 CFR 359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official designated by the Board. Under 5 CFR 359.502, the agency proposing the removal must provide the appointee 30 days advance notice and must advise the appointee of the right to request a hearing. If the appointee files the request at least 15 days before the effective date of the proposed removal, the request will be granted.

(b) *Place of filing.* A request for an informal hearing under paragraph (a) of this section must be filed with the Clerk of the Board. After the request has been assigned to a judge, subsequent pleadings must be filed with the Board office where the judge is located.

(c) *Initial filing and service.* The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing may not be submitted in electronic form.